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Brexit and the Common Law Constitution

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Please find below the journal abstract of “Brexit and the Common Law Constitution” by Gordon Anthony published in *European Public Law* Issue 4, Volume 24, 2018 edited by Patrick Birkinshaw.

This article considers the implications that Brexit holds for the UK’s ‘common law constitution’ – the body of principles and norms that the courts have developed in case law on EU membership, fundamental rights, and devolution. Focusing on the Supreme Court’s ruling in Miller, it argues that Brexit may have paradoxical effects within the case law. These start with the fact that the Supreme Court rationalized EU withdrawal in terms of Parliamentary sovereignty, but did so in a manner that casts doubt on the utility of distinctions between ‘internal’ and ‘external’ law. However, it is in the context of rights and devolution that the Supreme Court’s reliance on Parliamentary sovereignty as UK law’s ‘rule of recognition’ is most problematic, and the article notes a number of tensions in the law. In relation to rights, these are a result of an apparent retreat from a line of case law that had previously indicated that the courts might impose substantive limits on the powers of the Westminster Parliament. The tensions around devolution are a result of the subordinate role that the rule of recognition accords to the devolved institutions and its inability to accommodate any conception of ‘divided sovereignty’.

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(TEU and TFEU).“>EU Law, European Public Law, Journal Highlights, UK

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